IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

RP.No. 319 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRP.442/2003 Dated 17/12/2004
OS.131/1997 of MUNI-MAGI.COURT,MANNARKAD
(IA. 593 /2002)
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REVIEW PETITIOERN/RESPONDENT: :

ABDULLA, AGED 62 YEARS, RESIDING AT PERNUMANNIL HOUSE, PULLISSERY (POST), MANNARKKAD, PALAKKAD DISTRICT.

BY ADV. SRI.SANTHEEP ANKARATH

RESPONDENTS:

V.P. RAJAPPAN, S/O. PADMANABHAN, VENGAPPARA HOUSE, ARAKKURUSSI AMSOM, MANNARKKAD TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 11-10-2006, ALONG WITH RP NO. 298 OF 2006 THE COURT ON 13-12-2006 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

R.P.NO.319 OF 2006 IN C.R.P.NO. 442 OF 2003
& R.P.NO.298 OF 2006 IN CRP.NO.28 OF 200

DATED THIS THE 13TH DAY OF DECEMBER 2006

ORDER

The petitioner, who is the defendant in the suit and the respondent in C.R.P.No.442/2003, has sought for getting the order in the C.R.P. reviewed. It is submitted that the petitioner was ex parte in the suit which was decided on 18-1-2000. The same was a suit for specific performance against the petitioner. The petitioner was set ex parte on 11-1-2000. The petitioner filed an application to set aside the ex parte order on 18-1-2000 and the same was dismissed and the suit was decreed as ex parte on 18-1-2000. It is alleged that the balance sale consideration was not deposited within the stipulated time by the plaintiff/respondent herein. The plaintiff thereafter deposited the amount with an application to condone the delay without notice to the petitioner and the same was allowed. Thereafter on receipt of notice in the application for execution of sale deed through the court, the petitioner opposed the same. The petitioner also filed an application to set aside the ex parte decree and another

petition to condone the delay. The court below allowed the same on payment of costs of Rs.600/-. The above order was set aside in the C.R.P.filed before this Court. It is submitted that the petitioner is a 61 year old person suffering from several ailments and that his son is the only person who is the earning member of the family and that the son is a daily labourer. It is further pointed out that the petitioner is illiterate and that he could not enter appearance before this Court in the C.R.P. owing to his illness. It was only on account of his illness and financial stringencies that he was not represented in court. It is contended that the order in the C.R.P.is bad on account of errors of facts apparent on the face of the record. It is further pointed out that one acre of compound with valuable improvements and house is sought to be purchased for a paltry amount of Rs.50,000/-.

2. The respondent/plaintiff has opposed the application alleging latches and wilful negligence on the part of the petitioner at every point of the proceedings. He had not explained the reason of the delay of about three years in seeking to set aside the ex parte decree despite the fact that he

was aware of the entire proceedings. It is also pointed out that there is a delay of almost one year in seeking to review the well reasoned common orders passed in C.R.P.288/2003 and 442/2003. C.R.Ps. were admitted to file and notice ordered as early as in the year 2003. Even according to the petitioner, the petitioner allegedly fell ill and was under treatment from 20-11-2004 only. The treatment allegedly continued upto 19-11-2006 as per the medical certificate whereas the petitioner has filed R.P.on 6-4-2006 itself. Evidently statements in the medical certificate are false. It is also pointed out that the sale deed has been registered through court. Hence, at this point of time it would not be proper to entertain the present application. The Review Petitions are dismissed herewith.

Sd/-

K.R.UDAYABHANU, JUDGE

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P.S.TO JUDGE